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U.S. HOUSE OF REPRESENTATIVES  
PERMANENT SELECT  
COMMITTEE ON INTELLIGENCE  
WASHINGTON, D.C. 20515

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To Karen - attached is a  
copy of the bill and  
a two page key-point  
summary.

David  
19 March 1984

3/15/84

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98TH CONGRESS  
2D SESSION

# H. R. 5164

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1984

Mr. MAZZOLI (for himself, Mr. BOLAND, Mr. ROBINSON, and Mr. WHITEHURST) introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

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## A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Central Intelligence  
4       Agency Information Act".

5       SEC. 2. (a) The National Security Act of 1947 is  
6       amended by adding at the end thereof the following new title:

1 "TITLE VII—PROTECTION OF OPERATIONAL  
2 FILES OF THE CENTRAL INTELLIGENCE  
3 AGENCY

4 "EXEMPTION OF CERTAIN OPERATIONAL FILES FROM  
5 SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

6 "SEC. 701. (a) Operational files of the Central Intelli-  
7 gence Agency may be exempted by the Director of Central  
8 Intelligence from the provisions of the Freedom of Informa-  
9 tion Act (5 U.S.C. 552) which require publication or disclo-  
10 sure, or search or review in connection therewith.

11 "(b) For the purposes of this title the term 'operational  
12 files' means—

13 "(1) files of the Directorate of Operations which  
14 document the conduct of foreign intelligence or coun-  
15 terintelligence operations or intelligence or security lia-  
16 sion arrangements or information exchanges with for-  
17 eign governments or their intelligence or security serv-  
18 ices;

19 "(2) files of the Directorate for Science and Tech-  
20 nology which document the means by which foreign in-  
21 telligence or counterintelligence is collected through  
22 scientific and technical systems; or

23 "(3) files of the Office of Security which document  
24 investigations conducted to determine the suitability of

1 potential foreign intelligence or counterintelligence  
2 sources;  
3 except that files which are the sole repository of disseminated  
4 intelligence are not operational files.

5 “(c) Notwithstanding subsection (a) of this section,  
6 exempted operational files shall continue to be subject to  
7 search and review for information concerning—

8 “(1) United States citizens or aliens lawfully ad-  
9 mitted for permanent residence who have requested in-  
10 formation on themselves pursuant to the provisions of  
11 the Freedom of Information Act (5 U.S.C. 552) or the  
12 Privacy Act of 1974 (5 U.S.C. 552a);

13 “(2) any special activity the existence of which is  
14 not exempt from disclosure under the provisions of the  
15 Freedom of Information Act (5 U.S.C. 552); or

16 “(3) the specific subject matter of an investigation  
17 by the intelligence committees of the Congress, the In-  
18 telligence Oversight Board, the Department of Justice,  
19 the Office of General Counsel of the Central Intelli-  
20 gence Agency, the Office of Inspector General of the  
21 Central Intelligence Agency, or the Office of the Di-  
22 rector of Central Intelligence for any impropriety, or  
23 violation of law, Executive order, or Presidential direc-  
24 tive, in the conduct of an intelligence activity.

1       “(d)(1) Nonoperational files which contain information  
2 derived or disseminated from exempted operational files shall  
3 be subject to search and review.

4       “(2) The inclusion of information from exempted oper-  
5 ational files in nonoperational files shall not affect the exemp-  
6 tion under subsection (a) of this section of the originating  
7 operational files from search, review, publication, or disclo-  
8 sure.

9       “(3) Records from exempted operational files which  
10 have been disseminated to and referenced in nonoperational  
11 files and which have been returned to exempted operational  
12 files for sole retention shall be subject to search and review.

13       “(e) The provisions of subsection (a) of this section shall  
14 not be superseded except by a provision of law which is en-  
15 acted after the date of enactment of subsection (a), and which  
16 specifically cites and repeals or modifies its provisions.

17       “(f) Whenever any person who has requested agency  
18 records under the Freedom of Information Act (5 U.S.C.  
19 552) alleges that the Central Intelligence Agency has im-  
20 properly withheld records because of failure to comply with  
21 any provision of this section, judicial review shall be available  
22 under the terms set forth in subparagraph 552(a)(4)(B) of title  
23 5, United States Code, except that—

24               <sup>in any case in which</sup>  
25       “(1) information specifically authorized under cri-  
teria established by an Executive order to be kept

1 secret in the interest of national defense or foreign re-  
2 lations which is filed with, or produced for, the court  
3 by the Agency shall be examined ex parte, in camera  
4 by the court;

5 “(2) the court shall, to the fullest extent practica-  
6 ble, determine issues of fact based on sworn <sup>written</sup> <sub>A</sub> submis-  
7 sions of the parties;

8 “(3) when a complain<sup>ant</sup> alleges that requested  
9 records were improperly withheld because of improper  
10 placement solely in exempted operational files, the  
11 complainant shall support such allegation with a sworn  
12 written submission, based upon personal knowledge or  
13 otherwise admissible evidence;

14 “(4)(A) when a complainant alleges that requested  
15 records were improperly withheld because of improper  
16 exemption of operational files, the Agency shall meet  
17 its burden under subparagraph 552(a)(4)(B) of title 5,  
18 United States Code, by demonstrating to the court by  
19 affidavit that exempted files likely to contain respon-  
20 sive records currently perform the functions set forth in  
21 subsection (b) of this section; and

22 “(B) in making its determination under subpara-  
23 graph (A) of this paragraph, ~~The~~ court may not order  
24 the Agency to review the content of any operational  
25 file or files <sup>in order to carry burden under A</sup> unless the complainant disputes the Agen-  
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1 cy's showing with a sworn written submission based on  
2 personal knowledge or otherwise admissible evidence;

3 "(5) in proceedings under paragraphs (3) and (4)  
4 of this subsection the parties shall not obtain discovery  
5 pursuant to rules 26 through 35 of the Federal Rules  
6 of Civil Procedure, except that requests for admission  
7 may be made pursuant to rules 26 and 36;

8 "(6) if the court finds under this subsection that  
9 the Agency has improperly withheld requested records  
10 because of failure to comply with any provision of this  
11 section, the court shall order the Agency to search and  
12 review the appropriate exempted operational file or  
13 files for the requested records and make such records,  
14 or portions thereof, available in accordance with the  
15 provisions of the Freedom of Information Act (5  
16 U.S.C. 552), and such order shall be the exclusive  
17 remedy for failure to comply with this section; and

18 "(7) if at any time following the filing of a com-  
19 plaint pursuant to this subsection the Agency agrees to  
20 search the appropriate exempted operational file or  
21 files for the requested records, the court shall dismiss  
22 the claim based upon such complaint.

23 "DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

24 "SEC. 702. (a) Not less than once every ten years, the  
25 Director of Central Intelligence shall review the exemptions

1 in force under subsection (a) of section 701 of this Act to  
2 determine whether such exemptions may be removed from  
3 any category of exempted files or any portion thereof.

4       “(b) The review required by subsection (a) of this section  
5 shall include consideration of the historical value or other  
6 public interest in the subject matter of the particular category  
7 of files or portions thereof and the potential for declassifying  
8 a significant part of the information contained therein.

9       “(c) A complainant who alleges that the Agency has  
10 improperly withheld records because of failure to comply with  
11 this section may seek judicial review in the district court of  
12 the United States of the district in which any of the parties  
13 reside, or in the District of Columbia. In such a proceeding,  
14 the court's review shall be limited to determining (1) whether  
15 the Agency has conducted the review required by subsection  
16 (a) of this section within ten years of enactment of this Act or  
17 within ten years after the last review, and (2) whether the  
18 Agency, in fact, considered the criteria set forth in subsection  
19 (b) of this section in conducting the required review.”

20       (b) The table of contents at the beginning of such Act is  
21 amended by adding at the end thereof the following:

“TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE  
CENTRAL INTELLIGENCE AGENCY

“Sec. 701. Exemption of certain operational files from search, review, publication,  
or disclosure.

“Sec. 702. Decennial review of exempted operational files.”.



1        SEC. 3. The Director of Central Intelligence, in consul-  
2        tation with the Archivist of the United States, the Librarian  
3        of Congress, and appropriate representatives of the historical  
4        discipline selected by the Archivist, shall prepare and submit  
5        by June 1, 1985, to the Permanent<sup>Select</sup> Committee on Intelli-  
6        gence of the House of Representatives and the Select Com-  
7        mittee on Intelligence of the Senate a report on the feasibility  
8        of conducting systematic review for declassification and re-  
9        lease of Central Intelligence Agency information of historical  
10       value.

11       SEC. 4. The amendments made by section 2 shall be  
12       effective upon enactment of this Act and shall apply with  
13       respect to any requests for records, whether or not such re-  
14       quest was made prior to such enactment, and shall apply to  
15       all civil actions not commenced prior to February 7, 1984.

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The bill consists of four sections.

Section 1 provides that the short title of the bill is the "Central Intelligence Agency Information Act."

Section 2 amends the National Security Act of 1947 to permit the Director of Central Intelligence to exempt certain specifically defined CIA operational files from the search, review, and disclosure requirements of the Freedom of Information Act (FOIA).

Section 3 requires the Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and historians, to report by June 1, 1985 to the intelligence committees of the Congress on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

Section 4 makes clear that exemptions of CIA operational files from FOIA search and review apply to all FOIA requests, whether made before or after enactment of the bill, and to all FOIA lawsuits filed after February 7, 1984 (the day before the HPSCI Subcommittee on Legislation FOIA hearing).

#### Key Provisions

Section 2 of the bill contains the critical provisions of the legislation. Section 2 enacts a new Title VII of the National Security Act of 1947, to provide for exemption of certain CIA operational files from the FOIA process. The new title consists of sections 701 and 702 of the National Security Act. These provisions can be summarized briefly as follows:

<u>Subsection</u>	<u>Content</u>
701(a)	Permits the DCI to exempt certain CIA "operational files" from the FOIA process.
701(b)	Defines the term "operational files" to include only Directorate of Operations, Directorate for Science and Technology, and Office of Security files directly concerning intelligence sources and methods.
701(c)	Ensures that, notwithstanding exemption of operational files, such files will continue to be open for search and review for information concerning (1) U.S. persons who request information on themselves, (2) special activities the

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<u>Subsection</u>	<u>Content</u>
701(c) (Continued)	existence of which is not exempt from FOIA disclosure, and (3) the specific subject matter of investigations by the CIA, by the intelligence committees of Congress, or by executive branch oversight bodies of allegations of illegality or impropriety in the conduct of intelligence activities.
701(d)	Technical provisions ensuring that the transfer of records between exempted operational files and other files neither expands nor contracts the exemption authority granted to the DCI in subsection 701(a).
701(e)	Technical provision guarding against implied (as distinguished from express) repeal of subsection 701(a) by future enactment of statutes.
701(f)	Provides for a <u>de novo</u> substantive standard of judicial review of CIA compliance with section 701 within a precisely defined procedural framework, ensuring both protection for sensitive CIA information and effective judicial review.
702(a)	Requires the DCI to review exemptions of operational files at least once every ten years to determine whether such exemptions may be removed.
702(b)	Requires that the DCI's review of exemptions of operational files must consider the historical value or other public interest of the files and the potential for declassifying a significant part of the information they contain.
702(c)	Provides for limited judicial review of the DCI review of exemptions of operational files. The court's review of the DCI's action in this case is limited to determining whether the DCI actually conducted the review required by subsection 702(b) and whether the DCI actually considered the criteria set forth in subsection 702(c).